

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVOOD KHADEMI,

Plaintiff,

v.  
LOS RIOS COMMUNITY DISTRICT  
COLLEGE,

Defendant.

No. 2:23-cv-00260 TLN AC PS

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was referred to the undersigned by E.D. Cal. R. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

I. SCREENING

A determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure

1 (“Fed. R. Civ. P.”). Under the Federal Rules of Civil Procedure, the complaint must contain (1) a  
2 “short and plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed  
3 in this court, rather than in a state court), (2) a short and plain statement showing that plaintiff is  
4 entitled to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the  
5 relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and  
6 directly. Fed. R. Civ. P. 8(d)(1).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
9 court will (1) accept as true all the factual allegations contained in the complaint, unless they are  
10 clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
11 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
12 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
13 denied, 564 U.S. 1037 (2011).

14 The court applies the same rules of construction in determining whether the complaint  
15 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court  
16 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must  
17 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
18 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
19 (1972). However, the court need not accept as true conclusory allegations, unreasonable  
20 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
21 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice  
22 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,  
23 556 U.S. 662, 678 (2009). To state a claim on which relief may be granted, the plaintiff must  
24 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at  
25 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
26 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
27 Iqbal, 556 U.S. at 678.

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1 A pro se litigant is entitled to notice of the deficiencies in the complaint and an  
2 opportunity to amend unless the complaint's deficiencies could not be cured by amendment. See  
3 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as  
4 stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

5 **II. THE COMPLAINT**

6 Plaintiff was a student at Los Rios College ("ARC") in 2013-2014. ECF No. 1 at 8.  
7 Plaintiff attended ESL classes during the first semester. Id. Plaintiff alleges that defendant  
8 knowingly and maliciously participated in the violation of his student rights and services. Id.  
9 Plaintiff alleges defendants claimed that plaintiff was involved in misconduct related to a bike  
10 locker and suspended him from ARC in 2014. Id. at 2. Plaintiff alleges he was not provided  
11 proper assistance and shelter. Id. Plaintiff alleges his Fourteenth Amendment rights were  
12 violated. Id.

13 **III. ANALYSIS**

14 This case must be dismissed because it is time-barred. Plaintiff's claims are based on  
15 actions taken between 2013 and 2014. Title 42 U.S.C. Section 1983 provides a cause of action  
16 for the deprivation of "rights, privileges, or immunities secured by the Constitution or laws of the  
17 United States" against a person acting "under color of any statute, ordinance, regulation, custom,  
18 or usage." Gomez v. Toledo, 446 U.S. 635, 639 (1980). "Section 1983 is not itself a source of  
19 substantive rights; rather it provides a method for vindicating federal rights elsewhere conferred."  
20 Graham v. Connor, 490 U.S. 386, 393–394 (1989). To state a claim for relief under Section  
21 1983, a plaintiff must allege that the defendant (1) acted under color of state law; and (2) caused a  
22 plaintiff to be deprived of a right secured by the Constitution or laws of the United States. Nurre  
23 v. Whitehead, 580 F.3d 1087, 1092 (9th Cir. 2009).

24 The statute of limitations (the time period in which a plaintiff may sue) for an alleged  
25 §1983 violation is two years. Cal. Civ. Pro. § 335; Maldonado v. Harris, 370 F.3d 945, 954 (9th  
26 Cir. 2004) (applicable statute of limitations for Section 1983 actions is drawn from forums state's  
27 limitations period for personal injury actions; in California, a two-year limitations period was  
28 made effective as of January 1, 2003). A federal civil rights claim "accrues," and the statute of

1 limitations begins to run, “[w]hen the plaintiff has a complete and present cause of action, that is,  
2 when the plaintiff can file suit and obtain relief.” Wallace v. Kato, 549 U.S. 384, 388 (2007)  
3 (noting that while federal courts apply state statutes of limitation, the accrual date of a Section  
4 1983 cause of action is a question of federal law). Thus, even under a “light most favorable”  
5 reading of plaintiff’s complaint, any civil rights violation would have accrued at the latest in 2014  
6 — at the time he left the school. Plaintiff’s present complaint, filed 2023, came to this court well  
7 beyond the two-year statute of limitations. Cal. Civ. Pro. § 335; see also, e.g., Rogers v. City of  
8 Grover Beach, 2020 WL 5868038, at \*3 (C.D. Cal. Aug. 21, 2020) (dismissing Section 1983  
9 complaint based on alleged due process violation as beyond California’s two-year statute of  
10 limitations, which “expire[d] two years from the time plaintiff knows or has reason to know of his  
11 injury”). Accordingly, the complaint must be dismissed with prejudice.

12 **IV. PRO SE PLAINTIFF’S SUMMARY**

13 It is being recommended that your case be dismissed with prejudice because it is based on  
14 events that occurred between 2013 and 2014. These facts are too old to serve as the basis for a  
15 §1983 claim.

16 **V. CONCLUSION**

17 In accordance with the above, IT IS HEREBY ORDERED that plaintiff’s application to  
18 proceed in forma pauperis (ECF No. 2), is GRANTED.

19 Further, IT IS HEREBY RECOMMENDED that all claims against all defendants should  
20 be DISMISSED with prejudice.

21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
23 after being served with these findings and recommendations, plaintiff may file written objections  
24 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
25 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
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1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
2 (9th Cir. 1991).

3 IT IS SO ORDERED.

4 DATED: April 24, 2023

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6 ALLISON CLAIRE  
7 UNITED STATES MAGISTRATE JUDGE

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